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WITHROW & TERRANOVA CT
100 REGENCY FOREST DRIVE , SUITE 160
CARY, NC 27518

EXAMINER	
DUONG, OANH L	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/840,110	WEEL, MARTIN	
	Examiner	Art Unit	
	OANH DUONG	2455	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *61-64,66-70 and 72-92* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *61-64, 66-70, and 72-92* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Reopening of Prosecution after Appeal Brief

In view of the Appeal Brief filed on 02/19/2010, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2455

DETAILED ACTION

1. Claims 61-64, 66-70, and 72-92 are presented for examination.

Claims 1-60, 65, 71, and 93-108 have been canceled.

Claim Objections

2. Claim 78 is objected to because of the following informalities: the feature "play at a least" in claim 78 should be "play at least". Appropriate correction is required.

Claim Rejections – 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 61, 78, and 89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The features "selecting, by the processing device, a matching user profile from the plurality of user profiles" in claim 61, "selecting a matching user profile from the plurality of profiles" in claim 78, and select a matching user profile from the plurality of profiles" in claim 89 are not fully supported by Applicant's specification. Although, in Appeal Brief filed 02/19/2010, Applicant pointed

out the element 65 of Figure 6 and Paragraph [0103] in Application's specification support the aforementioned features, the element 65 of Figure 6 and the paragraph [0103] only discloses "at least one match is found."

Claim Rejections – 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 61-64, 66, 68-70, and 75-77 are rejected under 35 U.S.C. 102(b) as being anticipated by **Ward**, US 6,526,411 B1.

Regarding claim 61, Ward teaches a method comprising:

comparing, by a processing device, each of a plurality of user profiles with a target user profile (i.e., *the seed user profile*) of a first user associated with a media player device *(i.e., a dynamic playlist system 100*) [*Fig. 2, col.3 lines 31-34 and col. 8 lines10-21*);

selecting, by the processing device, a matching user profile from the plurality of user profiles (i.e., *in col. 3 lines 33-36, Ward discloses comparing the seed/target user profile against all available profile, ranking all compared profiles by similarity to the selected seed profile, and clustering the most similar profile(s) with the seed profile. It*

will be readily recognized that the most similar profile(s) must be identified or selected from similar profiles for being clustered with the selected seed user profile);

selecting of a playlist of a matching user associated with the matching user profile (i.e., *in Fig. 8, col. 2 lines 19-20, col. 3 lines 36-38 and col. 8 lines 10-21, Ward discloses the frequency of all items in the clustered/selected profiles are counted and the most frequent items/playlist are used to build a hash profile of the most frequent items to represent each respective cluster. It will be readily recognized that the most frequent items must be selected from all frequent items in order to be utilized for building a hash profile of the most frequent items. In addition, since a list of the most frequent items (i.e., playlist) is in the clustered/matched user profiles and the most frequent items are ranked by order reflected by usage of other users (col. 2 lines 19-25 and col. 3 lines 33-38), the list of the most frequent items is a playlist of matching user(s) associated with the matching/clustered user profile(s)*); and

delivering the playlist to the media player device (i.e., col. 1 lines 17-23).

Regarding claim 62, Ward teaches the method of claim 61, wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile (i.e., col. 3 lines 31-36).

Regarding claim 63, Ward teaches the method of claim 61 wherein a plurality of playlists including the playlist are stored by at least one server (i.e., col. 6 lines 1-10 and col. 8 lines 1-19), each of the plurality of playlists is a playlist of one of a plurality of

users including the matching user (col. 8 lines 1-19 and col. 9 lines 11-17), and each of the plurality of users is associated with one of the plurality of user profiles (i.e., col. 8 lines 28-35).

Regarding claim 64, Ward teaches the method of claim 63 wherein the step of comparing is performed by the at least one server storing the plurality of playlists (i.e., col. 6 lines 26-35).

Regarding claim 66, Ward teaches the method of claim 63 wherein the step of comparing is performed by the media player device (i.e., col. 6 lines 26-35).

Regarding claim 68, Ward teaches the method of claim 63 wherein the at least one server comprises central server (i.e., col. 10 lines 64-67).

Regarding claim 69, Ward teaches the method of claim 63 wherein the at least one server comprises a plurality of peer media player devices forming a Peer-to-Peer (P2P) network (i.e., col. 10 lines 64-67).

Regarding claim 70, Ward teaches the method of claim 69 wherein comparing each of the plurality of user profiles with the target profile of the first user associated with the media player device to select the matching user profile comprises, at each peer

media player device from the plurality of peer media player devices, comparing a one of the plurality of user profiles associated with a user of the peer media player device and the target user (i.e., col. 10 lines 37-67).

Regarding claims 75, Ward teaches the method of claim 63 further comprising editing the playlist at the media player device to further include items played in excess of a threshold rate at the media player device (i.e., col. 6 lines 61-65).

Regarding claim 76, Ward teaches the method of claim 63 further comprising editing the playlist at the media player device to remove items played less than a threshold rate at the media player device (i.e., col. 6 lines 61-65).

Regarding claim 77, Ward teaches the method of claim 61 wherein the media player device is a dedicated media player device (i.e. abstract).

7. Claims 89, 90, and 92 are rejected under 35 U.S.C. 102(b) as being anticipated by **Chislenko** et al. ("Chislenko"), US 6,041,311.

Regarding claim 89, Chislenko teaches a server (i.e., server 40, Fig. 4) comprising:

a communication interface communicatively coupling the media player device (user device 44) to a network (Fig. 4); and

a control system associated with the communication interface and adapted to:

store a plurality of playlists each associated with one of a plurality of users (i.e., *item profiles are stored in a memory 12 of server 40, each item profile contains at least an identification of a user and item(s) (i.e. playlist) given rating by the user, Figs 3-4 col. 19 lines 8-1 and 41-45 and col. 20 lines 27-29);*

compare each of a plurality of user profiles with a target user profile of a first user associated with a media player device *(i.e., "comparing that user's profile with the profile of every other user of the system", col. 5 lines 51-55*);

selecting a matching user profile from the plurality of user profiles *(read as at least one match is found as specifically pointed out the support (Figure 6, element 65, and Specification, paragraph [0103]) by Applicant in page 2 of Appeal Brief. In col. 5 lines 29-33, Chislenko discloses calculating similarity factors from the user profiles for matching similar user*), the matching user profile associated with a second user from a plurality of users (i.e*., col. 5 lines 54-55*);

effect selection of a playlist (*According to Applicant's specification in page 1 paragraph [0003], a play list is a list of a user's favorite selection*) of a second user (*i.e., neighbor*) from the plurality of playlists for delivery to the media player device (i*.e., col.10 lines 3-5: Chislenko discloses select items that are highly rated (i.e., favorable selection) by the user's neighbor (i.e., second user)*); and

communicate the playlist to the media device (i.e., in col. 19 lines 41-42 and col. 21 line 12: Chislenko discloses recommend items to a user and allow the user to receive recommendations. A person of ordinary skill in the art will readily recognize that the items must be communicated to the user device in order to be received by the user).

Regarding claim 90, Chislenko teaches the method of claim 89 wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile (i.e., col. 11 lines 9-24).

Regarding claim 92, Chislenko teaches the method of claim 89 wherein the media player device is a dedicated media player device (i.e., "an audio device", col. 21 lines 45-49).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Elliott**, US 2005/0165888 A1.

Regarding claims 72, Ward teaches the method of claim 71.

Ward does not explicitly teach automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user.

Elliot teaches a technique for data replication and propagation allows synchronization of user interfaces on peer machines in a peer-to-peer network (abstract). Elliot teaches automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user (page 3 paragraph [0031]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of Ward to automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user as taught by Elliot. One would be motivated to do so to enable a change made to the playlist by one user to be quickly reflected in the user interface of another user.

10. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Mercer** et al. ("Mercer"), US 2004/0078382 A1.

Regarding claim 73, Ward teaches the method of claim 71.

Ward does not explicitly teach filtering the playlist to remove at least one item that is not compatible with the media player device.

Mercer, in the same digital media content field of endeavor, teaches filtering the playlist to remove at least one item that is not compatible with the media player device (page 3 paragraph [036]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of Ward to filter the playlist to remove at least one item that is not compatible with the media player device as taught by Mercer. One would be motivated to so to enable the selected media files to be filtered as a function of a media type associated with the media player.

11. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Smith** et al. ("Smith"), US 2004/0133914 A1.

Regarding claim 74, Ward teaches the method of claim 63.

Ward does not explicitly teach filtering the playlist to remove at least one item that is not compatible with a location of the media player device.

Smith teaches filtering the playlist to remove at least one item that is not compatible with a location of the media player device (i.e., page 9 paragraph [0069]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of Ward to filter the playlist to remove at

least one item that is not compatible with a location of the media player device as taught by Smith. One would be motivated to do so to provide digital media content selections or playlist that the user highly desire.

12. Claims 67, 78-81 and 85-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, US 6,526,411 B1, in view of **Chislenko** et al. ("Chislenko"), US 6,041,311.

Regarding claim 78, Ward teaches a media player device comprising:

a communication interface communicatively coupling the media player device *(i.e., Dynamic Playlist Content Player System 110*) to a network (i.e., *Communication Link 40) [Fig. 2*); and

a control system associated with the communication interface and adapted to:

comparing each of a plurality of user profiles with a target user profile (i.e., *the seed user profile*) of a first user associated with a media player device *(i.e., a dynamic playlist system 100*) [*Fig. 2, col.3 lines 31-34 and col. 8 lines10-21*);

selecting a matching user profile from the plurality of user profiles (i.e., *in col. 3 lines 33-36, Ward discloses comparing the seed/target user profile against all available profile, ranking all compared profiles by similarity to the selected seed profile, and clustering the most similar profile(s) with the seed profile. It will be readily recognized that the most similar profile(s) must be identified or*

selected from similar profiles for being clustered with the selected seed user profile); and

play at least a portion of a song identified on the playlist (i.e., col. 5 lines 48-49).

Ward does not explicitly teach request delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device.

Chislenko, in the same collaborative filtering field of endeavor, teaches request delivery of a playlist of a matching user associated with the matching user profile *(in col. 11 lines 9-29 and col. 20 lines 8-11 and 51, Chislenko discloses system allows user to request recommendations, wherein the recommendations includes items of a user having similar tastes*) from a server (i.e., server 40, Figs 3-4) storing the playlist (*i.e., col. 19 lines 41-45 and col. 20 lines 27-29*) to the media player device (user device 44) .

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of Ward to request delivery of a playlist as taught by Chislenko. One would be motivated to do so allow user to switch between rating items and receive recommendations many times (Chislenko, col. 21 lines 11-12).

Regarding claim 67, Ward-Chislenko teaches the method of claim 66 further comprising requesting delivery of the playlist from the at least one server to the media player device (Chislenko, Figs 3-4, col. 19 lines 41-45 and col. 20 lines 27-20 and line 51).

Regarding claim 79, Ward teaches the media player device of claim 78, wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile (i.e., col. 3 lines 31-36).

Regarding claim 80, Ward teaches the media player device of claim 78 wherein the server is central server (i.e., col. 10 lines 64-67).

Regarding claim 81, Ward teaches the media player device of claim 78 wherein the server is one of a plurality of peer media player devices forming a Peer-to-Peer (P2P) network (i.e., col. 10 lines 64-67).

Regarding claim 85, Ward teaches the media player device of claim 78 wherein the control system is further adapted to edit the playlist at the media player device to further include items played in excess of a threshold rate at the media player device (i.e., col. 6 lines 61-65).

Regarding claim 86, Ward teaches the media player device of claim 78 wherein the control system is further adapted to edit the playlist at the media player device to remove items played less than a threshold rate at the media player device (i.e., col. 6 lines 61-65).

Regarding claim 87, Ward teaches the media player device of claim 78 wherein the media player device is a dedicated media player device (i.e. abstract).

Regarding claim 88, Ward teaches the media player device of claim 78 wherein a plurality of playlists including the playlist are stored by at least one server including the server (i.e., col. 6 lines 1-10 and col. 8 lines 1-19), each of the plurality of playlists is a playlist of one of a plurality of users including the matching user (col. 8 lines 1-19 and col. 9 lines 11-17), and each of the plurality of users is associated with one of the plurality of user profiles (i.e., col. 8 lines 28-35).

13. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Chislenko** and **Elliott**, US 2005/0165888 A1.

Regarding claim 82, Ward teaches the media player device of claim 78.

The combination of teachings of Ward and Chislenko does not explicitly teach automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user.

Elliot teaches a technique for data replication and propagation allows synchronization of user interfaces on peer machines in a peer-to-peer network (abstract). Elliot teaches automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user (page 3 paragraph [0031]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of Ward and Chislenko to automatically updating the playlist at the media player device in response to a change

made to the playlist by the matching user as taught by Elliot. One would be motivated to do so to enable a change made to the playlist by one user to be quickly reflected in the user interface of another user.

14. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Chislenko** and **Mercer** et al. ("Mercer"), US 2004/0078382 A1.

Regarding claim 83, Ward teaches the media player device of claim 78.

The combination of teachings of Ward and Chislenko does not explicitly teach filtering the playlist to remove at least one item that is not compatible with the media player device.

Mercer, in the same digital media content field of endeavor, teaches filtering the playlist to remove at least one item that is not compatible with the media player device (page 3 paragraph [036]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of Ward and Chislenko to filter the playlist to remove at least one item that is not compatible with the media player device as taught by Mercer. One would be motivated to so to enable the selected media files to be filtered as a function of a media type associated with the media player.

15. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ward**, in view of **Chislenko** and **Smith**.

Regarding claim 84, Ward teaches the media player device of claim 78.

The combination of teachings Ward and Chislenko does not explicitly teach filtering the playlist to remove at least one item that is not compatible with a location of the media player device.

Smith teaches filtering the playlist to remove at least one item that is not compatible with a location of the media player device (i.e., page 9 paragraph [0069]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of Ward and Chislenko to filter the playlist to remove at least one item that is not compatible with a location of the media player device as taught by Smith. One would be motivated to do so to provide digital media content selections or playlist that the user highly desires.

16. Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Chislenko**, in view of **Elliott**, US 2005/0165888 A1.

Regarding claim 91, Chislenko teaches the method of claim 89.

Chislenko does not explicitly teach automatically updating the playlist at the media player device in response to a change made to the playlist by the second user.

Elliot teaches a technique for data replication and propagation allows synchronization of user interfaces on peer machines in a peer-to-peer network (abstract). Elliot teaches automatically updating the playlist at the media player device in

response to a change made to the playlist by the second user (page 3 paragraph [0031]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of Chislenko to automatically updating the playlist at the media player device in response to a change made to the playlist by the second user as taught by Elliot. One would be motivated to do so to enable a change made to the playlist by one user to be quickly reflected in the user interface of another user.

Response to Arguments

17. Applicant's arguments with respect to claims 61-88 have been considered but are moot in view of the new ground(s) of rejection.

18. Applicant's arguments with respect to claim 89 have been fully considered but they are not persuasive.

Applicant argued in substance that

(**A**) Chislenko fails to teach or suggest or suggest a server that stores playlists.

As to point (**A**), Chislenko does teaches a server that store playlists i.e., *item profiles are stored in a memory 12 of server 40, each item profile contains at least an identification of a user and item(s) (i.e. playlist) given rating by the user, Figs 3-4 col. 19 lines 8-1 and 41-45 and col. 20 lines 27-29).*

(**B**) Nowhere does Chislenko teach or suggest a plurality of playlists each associated with one of a plurality of users.

As to point (**B**), Chislenko does disclose a plurality of playlists each associated with one of a plurality of users (i.e., in Figs 3-4, *col. 19 lines 8-1 and 41-45 and col. 20 lines 27-29*, Chislenko discloses item profiles are stored in a memory 12 of server 4, each item profile contains at least an identification of a user and item(s) given rating by the user.

(**C**) Nowhere does Chislenko teach or suggest the selection of a playlist from a plurality of playlists that are stored on a server.

As to point (**C**), According to Applicant's specification in page 1 paragraph [0003], a play list is a list of a user's favorite selections. Chislenko discloses *select items that are highly rated by the user's neighbor (I., .e, col. 10 lines 3-5).* It will be readily recognized that the items, which are highly rated by a user, are the user's favorite selections. Further, Chislenko teaches a plurality of playlist that are stored on a server (see discussion in point (**A**)).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to OANH DUONG whose telephone number is (571)272-3983. The examiner can normally be reached on Monday- Friday, 9:30PM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Oanh Duong/
Primary Examiner, Art Unit 2455